



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



SUMMARY MINUTES – JULY 22, 2008

OPEN SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

MEMBERS PRESENT:

Sean Harrigan, President
Richard Costigan, Vice President
Anne Sheehan, Member
Patricia Clarey, Member

2. REPORT OF THE EXECUTIVE OFFICER

- Suzanne M. Ambrose

- Introduction of new Secretariat, Heather Cable
- SPB has met CHP requirements of psychological screenings for their upcoming academy. CHP had 240 cadets for the academy that started on July 21, 2008.
- SPB has a new Presiding Administrative Law Judge, Alvin Gittisriboongul. Barbara Brecher is the current Presiding ALJ and Alvin will replace her next month.

3. REPORT OF THE CHIEF COUNSEL

- Elise S. Rose

- The United States District Court has issued its order in Plata v. Schwarzenegger that requires the SPB to review disciplinary actions taken against Department of Corrections and Rehabilitation physicians under the substantial evidence standard. The Chief Counsel will brief the Board at the next Board meeting as to the Board's legal options concerning that order. In the interim, SPB staff have been meeting with representatives from CDCR and the Receiver's Office in an effort to implement the order.
- The Sacramento County Superior Court has upheld the Board's decision in Fouch v. SPB/CDCR. The court upheld appellant's dismissal, and rejected CDCR's cross-petition that asserted the Board improperly dismissed several allegations against appellant as time-barred.
- CCPOA has filed a petition for writ of mandate in Darchuck v. SPB/CDCR, alleging that the Board committed reversible error by having the decision written by a Senior Staff Counsel, as opposed to an ALJ (ALJ Cloughesy did not draft the decision prior to his departure from the SPB). The Board may wish to take an active role in the litigation.
- CCPOA has requested that the SPB participate as an amicus in the petition for review CCPOA has filed with the California Supreme Court concerning the Third District Court of Appeal's decision permitting the State to send prisoners to out-of-state prisons to relieve overcrowding.

- In response to a Public Records Act request from the Sacramento Bee, SPB staff compiled the following statistics regarding petitions for writ of mandate filed against the Board since 1995: 300 decisions have been issued by the courts. The Board has been sustained in 250 cases (83%), has been overturned in part in 27 cases (9%), and reversed in 23 cases (8%).

4. REPORT ON LEGISLATION

- Carol Ong

- AB 3042, SPB's bill on delivery and service options was signed by the Governor on July 18th and has been chaptered.
- On July 16th, SB 1472, SPB's CEA bill, was heard in Assembly Appropriations and placed in suspense.
- On July 16th the amended version of SB 1505, relating to Whistleblower Protection, passed out of Assembly Appropriations on an 11-5 vote.
- On July 17th, at the request of the author's office, SPB staff met with them and AFSCME representatives to discuss AB 2753 relating to social workers.

5. NEW BUSINESS

NONE

6. DISCUSSION OF UPCOMING BOARD MEETING SCHEDULED FOR AUGUST 4-5, 2008, IN SACRAMENTO, CALIFORNIA.

Meeting will be rescheduled to August 8, 2008 and will begin at 8:00 a.m.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matters submitted at prior hearing.
[Government Code Sections 11126(c)(3), 18653(3)]

8. DELIBERATION ON NON-EVIDENTIARY CASES AND ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on proposed, rejected, remanded, and submitted decisions, petitions for rehearing, and other matters related to cases heard by Administrative Law Judges of the State Personnel Board or by the Board itself.

[Government Code sections 11126(c)(3), 18653]

9. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial.
[Government Code sections 11126(e)(1), 18653.]

California Highway Patrol, et al. v. State Personnel Board, et al.
Sacramento Superior Court
Case No. 34-2008-00002G14-CU-WM-GDS

California Department Corrections and Rehabilitation, et al. v. State Personnel Board, et al.
Sacramento Superior Court
Case No. 34-2007-00883875-CU-WM-GDS

Patrick McCollum v. State of California
United States District Court, Northern District of California
Case No. C 04-03339 CRB

Plata, et al. v. Schwarzenegger, et al.
Case No. C01-1351 TEH

10. RECOMMENDATIONS TO THE LEGISLATURE

NONE

11. RECOMMENDATIONS TO THE GOVERNOR

NONE

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

BOARD ACTIONS:

12. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF THE MAY 27 and JUNE 10, 2008, BOARD MEETINGS.

ACTION: ADOPTED

VOTE: Harrigan, Costigan, Sheehan, Clarey – Aye

13. RESOLUTION EXTENDING TIME PURSUANT TO GOVERNMENT CODE SECTION 18671.1

ACTION: ADOPTED

VOTE: Harrigan, Costigan, Sheehan, Clarey – Aye

14. SUBMITTED ITEMS

A. PERSONAL SERVICES CONTRACT NO. 08-03

Appeal by the Union of American Physicians & Dentists from Executive Officer's February 4, 2008, Decision approving six Personal Services Contracts for Psychiatric Services (Ratification of Board's vote on 6/10/08).

NO ACTION

B. PERSONAL SERVICES CONTRACT NO. 08-04

Appeal of the California State Prison Medical Care System Receiver from the Executive Officers' February 14, 2008, disapproval of six personal services contracts for recreation and occupational therapist services.

NO ACTION

15. ANNOUNCEMENT OF ACTION TAKEN ON EVIDENTIARY CASES

On July 22, 2008, the Board took the following action on the cases listed as presented by Elise S. Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Sheehan, Clarey – Aye

A. BOARD CASES SUBMITTED

(1) CASE NO. 06-0817A

Appeal from dismissal

Classification: Industrial Relations Counsel IV

Department: Department of Industrial Relations

Proposed decision rejected March 25, 2008.

Transcript prepared.

Oral argument set for June 9-10, 2008, Sacramento.

Oral argument continued.

Oral argument heard July 8, 2008, Sacramento.

Case ready for decision by FULL Board.

NO ACTION

B. ORAL ARGUMENTS

NONE

C. CHIEF COUNSEL RESOLUTIONS, REMANDS, STIPULATIONS, OTHER

NONE

D. ADMINISTRATIVE LAW JUDGES' PROPOSED DECISIONS

PROPOSED DECISIONS

(1) CASE NO. 06-2469

Appeal from demotion

Classification: Correctional Lieutenant

Department: Department of Corrections and Rehabilitation

ACTION: SUBMITTED

(2) CASE NO. 07-1415

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision

(3) CASE NO. 07-1865

Appeal from dismissal

Classification: Psychiatric Technician

Department: Department of Developmental Services

ACTION: The Board adopted the ALJ's Proposed Decision

(4) CASE NO. 07-1941

Appeal from rejection during probation

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision, except for the finding that the Department acted in bad faith in rejecting appellant, and the finding that the appellant was entitled to benefits.

- (5) **CASE NO. 07-2805**
Appeal from dismissal
Classification: Motor Vehicle Field Representative
Department: Department of Motor Vehicles
ACTION: The Board adopted the ALJ's Proposed Decision
- (6) **CASE NO. 06-0393**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision
- (7) **CASE NO. 07-5070**
Appeal from one step reduction in salary for six months
Classification: Correctional Lieutenant
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision
- (8) **CASE NO. 05-2303**
Appeal from ten percent reduction in salary for 13 months
Classification: Parole Agent I, Adult Parole
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision
- (9) **CASE NO. 06-2521**
Appeal from ten work day's suspension
Classification: Correctional Sergeant
Department: Department of Corrections and Rehabilitation
ACTION: SUBMITTED
- (10) **CASE NO. 07-2763**
Appeal from ten percent reduction in salary for 24 months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision

(11) CASE NO. 07-3877

Appeal from rejection during probation

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision, but directed staff to make a clerical change to that portion of the Order that asserted that appellant is entitled to an award of back pay and benefits, finding instead that appellant is entitled to an award of back pay under Government Code section 19180.

(12) CASE NO. 07-1329

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision

(13) CASE NO. 06-1951E

Appeal from denial of discrimination complaint

Classification: Field Examiner I

Department: Agricultural Labor Relations Board

ACTION: The Board adopted the ALJ's Proposed Decision

(14) CASE NO. 07-3077

Appeal from dismissal

Classification: Mail Machine Operator II

Department: Department of Motor Vehicles

ACTION: The Board adopted the ALJ's Proposed Decision

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

(1) CASE NO. 06-1387P

Appeal from dismissal

Classification: Physician and Surgeon (Correctional Facility)

Department: Department of Corrections and Rehabilitation

ACTION: DENIED

- (2) **CASE NO. 06-4241P**
Appeal from demotion
Classification: Disability Evaluation Analyst
Department: Department of Social Services
ACTION: The Board granted the Department of Social Service's petition, and remanded the case for hearing before an ALJ.
- (3) **CASE NO. 07-0101EP**
Appeal from whistleblower retaliation complaint
Classification: Registered Nurse
Department: Department of Developmental Services
ACTION: DENIED
- (4) **PSC SPB File NO. 07-011(a)**
Petition for rehearing filed by the International Union of Operating Engineers, Unit 12 to be granted or denied
Department: California Science Center
ACTION: DENIED

F. PENDING BOARD REVIEW

- (1) **CASE NO. 06-2706A**
Appeal from dismissal
Classification: Correctional Sergeant
Department: Department of Corrections and Rehabilitation

Proposed decision rejected December 4, 2007.
Transcript prepared.
Oral argument set for August 4-5, 2008, Sacramento.
NO ACTION
- (2) **CASE NO. 04-1782A**
Appeal from constructive medical suspension
Classification: Correctional Counselor I
Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 24, 2008.
Pending transcripts.
NO ACTION
- (3) **CASE NO. 07-3744PA**
Appeal from dismissal
Classification: Staff Services Analyst
Department: Department of Justice

Proposed decision rejected July 8, 2008.
Pending transcripts.

NO ACTION

(4) CASE NO. 06-2737PA

Appeal from dismissal

Classification: Correctional Sergeant

Department: Department of Corrections and
Rehabilitation

Petition for rehearing granted April 22, 2008.
Transcripts prepared.
Oral argument set for August 4-5, 2008, Sacramento.

NO ACTION

(5) CASE NO. 07-4470

Appeal from twenty-two working days suspension

Classification: Correctional Officer

Department: Department of Corrections and
Rehabilitation

Proposed decision rejected May 13, 2008.
Transcripts prepared.
Oral argument set for September 2-3, 2008, Sacramento.

NO ACTION

(6) CASE NO. 07-2581

Appeal from rejection during probation

Classification: Correctional Officer Cadet

Department: Department of Corrections and
Rehabilitation

Proposed decision rejected on May 13, 2008.
Transcripts prepared.
Oral argument set for September 2-3, 2008, Sacramento.

NO ACTION

(7) CASE NO. 07-1295

Appeal from dismissal

Classification: Fire Apparatus Engineer-Paramedic

Department: Department of Forestry and Protection

Proposed decision rejected on May 13, 2008.
Transcripts prepared.
Oral argument set for September 2-3, 2008, Sacramento.
NO ACTION

- (8) **CASE NO. 07-2966E**
Appeal from discrimination complaint
Classification: Environmental Planner
Department: Department of Transportation

Proposed decision rejected May 13, 2008.
Transcripts prepared.
Oral argument set for September 2-3, 2008, Sacramento.
NO ACTION

- (9) **CASE NO. 07-2189A**
Appeal from non-punitive termination
Classification: Vocational Instructor (Welding),
Correctional Facility.
Department: Department of Corrections and
Rehabilitation

Proposed decision rejected March 4, 2008.
Transcript prepared.
Oral argument set for June 9-10, 2008, Sacramento.
Oral argument continued.
Oral argument set for August 4-5, 2008, Sacramento.
NO ACTION

16. ANNOUNCEMENT OF ACTION TAKEN ON NON-EVIDENTIARY CASES

On July 22, 2008, the Board took the following action on the cases listed as presented by Elise S. Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Sheehan, Clarey - Aye

A. WITHHOLD APPEALS

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

- (1) **CASE NO. 07-1838N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DENIED
- (2) **CASE NO. 06-4094N**
Classification: Cadet
Department: California Highway Patrol
ACTION: DENIED
- (3) **CASE NO. 06-2584N (*Remanded from 4/7/08 Board Meeting*)**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: GRANTED
- (4) **CASE NO. 07-0538N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: GRANTED
- (5) **CASE NO. 06-4330N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board remanded the case back to staff for clarification.
- (6) **CASE NO. 07-0583N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DENIED
- (7) **CASE NO. 06-4095N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: GRANTED

- (8) **CASE NO. 07-1269N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DENIED
- (9) **CASE NO. 07-1258N**
Classification: Youth Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DENIED
- (10) **CASE NO. 07-0531N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DENIED
- (11) **CASE NO. 06-4170N**
Classification: Youth Correctional Counselor
Department: Department of Corrections and Rehabilitation
ACTION: GRANTED
- (12) **CASE NO. 06-4057N**
Classification: Cadet
Department: California Highway Patrol
ACTION: DENIED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

CASES HEARD BY STAFF HEARING OFFICER

- (1) **CASE NO. 06-3963N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED
- (2) **CASE NO. 07-1701N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED

- (3) **CASE NO. 06-1889N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED
- (4) **CASE NO. 06-2739N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED
- (5) **CASE NO. 07-1663N**
Classification: Cadet
Department: California Highway Patrol
ACTION: DENIED
- (6) **CASE NO. 06-1631N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED
- (7) **CASE NO. 06-2191N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED
- (8) **CASE NO. 06-4167N**
Classification: Correctional Officer
Department: California Department of Corrections and Rehabilitation
ACTION: DENIED

C. **EXAMINATION APPEALS, MINIMUM QUALIFICATIONS, MERIT
ISSUE COMPLAINTS**

NONE

D. **RULE 211 APPEALS, RULE 212 OUT OF CLASS APPEALS,
VOIDED APPOINTMENT APPEALS**

RULE 211

- (1) **CASE NO. 06-4766N**
Classification: Caltrans Equipment Operator II
Department: Department of Transportation
ACTION: DENIED

E. REQUEST TO FILE CHARGES CASES, PETITION FOR REHEARING

NONE

17. ANNOUNCEMENT OF ACTION TAKEN ON NON-HEARING AGENDA

On July 22, 2008, the Board took the following action on the items listed as presented by Elise S. Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Sheehan, Clarey – Aye

A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.

(1) **ALTERNATE RANGE CRITERIA (ARC) 24, 25, 269 AND 323, DEPARTMENT OF TRANSPORTATION**

The Department of Transportation proposes revisions to ARC 24 (Environmental Planner), ARC 25 (Transportation Planner), ARC 269 (Right of Way Agent), and ARC 323 (Rail Transportation Assistant), to mirror the recent changes to the Staff Services Analyst classification.

(2) **STAFF PSYCHIATRIST, CORRECTIONAL AND REHABILITATIVE SERVICES (SAFETY); SENIOR PSYCHIATRIST (SPECIALIST), CORRECTIONAL AND REHABILITATIVE SERVICES, (SAFETY); SENIOR PSYCHIATRIST (SUPERVISOR), CORRECTIONAL AND REHABILITATIVE SERVICES (SAFETY); CHIEF PSYCHIATRIST, CORRECTIONAL AND REHABILITATIVE SERVICES, (SAFETY).**

The Department of Corrections and Rehabilitation proposes a correction to the February 22, 2008 board item regarding the above classes to address information that was inadvertently omitted from the original item.

ACTION: ADOPTED

- B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION HAVE NO OBJECTION TO THE ABOLISHMENT OF THESE CLASSES.**

THE DEPARTMENT OF PERSONNEL ADMINISTRATION AND STATE PERSONNEL BOARD propose to abolish the following unused classifications, which have been vacant for more than twenty-four months. Departments that utilize the class as well as the appropriate union have no objection to the abolishment of these classes. When classes are proposed to be abolished which are part of a class series, and other classes within the series will continue to be used, the class specification is included in the board item.

<u>Title</u>	<u>Class Code</u>
Staff Supervisor Bureau of Milk Pooling	4293
Administrative Officer, District Agricultural Association	4831
Chief, Food and Drug Science Section	5472
Assistant Director (Medical), Department of Health Services, CEA	0658

ACTION: ADOPTED

18. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION**

(1) CHIEF, INTERNAL AUDITS

The California Department of Public Health proposes to allocate the above position to the CEA category. Under the direction of the Directorate, the incumbent plans, organizes, and directs internal audits, confidential investigations, and performance reviews for the Department.

(2) DEPUTY COMPTROLLER

The California Housing Finance Agency proposes to allocate the above position to the CEA category. The position plans, organizes and directs the Bond and Fiscal Administration Section of the Fiscal Services Division. The incumbent is responsible for bond administration, financial

reporting, fiscal systems, homeownership loan accounting and purchasing accounting operations, and tax compliance and annual financial audits.

(3) DIRECTOR OF FISCAL OPERATIONS

The California Department of Food and Agriculture proposes to allocate the above position to the CEA category. The position manages the financial, legislative, administrative, and fair intervention functions for the Division of Fairs and Expositions. The incumbent provides fiscal and policy oversight to the Network of California Fairs, also called District Agricultural Associations and ensures compliance with laws and regulations, and the best use of available funding and other services.

(4) CHIEF, INVESTIGATIONS BRANCH

The Department of Social Services proposes to allocate the above position to allocate the above position to the CEA category, on a permanent basis. This CEA allocation was previously approved on a limited-term basis. The Chief, Investigations Branch is responsible for managing and directing the activities of the centralized Investigations Branch responsible for meeting divisional and Departmental investigative goals.

ACTION: NOTED

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

(1) PROJECT MANAGEMENT OFFICER

The California Department of Corrections and Rehabilitation, Plata Health Care Services' request to allocate the above position was approved effective June 24, 2008.

(2) PROJECT INFORMATION OFFICER – NEW CONSTRUCTION

The California Department of Corrections and Rehabilitation, Plata Health Care Services' request to allocate the above position was approved effective June 24, 2008.

(3) DIRECTOR, FIELD SUPPORT DIVISION

The California Department of Corrections and Rehabilitation, Plata Health Care Services' request to allocate the above position was approved effective June 24, 2008.

(4) PROJECT DIRECTOR, FISCAL INTERMEDIARY MEDICAID MANAGEMENT INFORMATION SYSTEM

The California Department of Health Care Services' request to allocate the above position was approved effective June 24, 2008.

(5) SENIOR VICE PRESIDENT OF SOUTHERN CALIFORNIA CLAIMS

The State Compensation Insurance Fund's request to allocate the above position was approved effective June 24, 2008.

(6) SENIOR VICE PRESIDENT OF NORTHERN CALIFORNIA CLAIMS

The State Compensation Insurance Fund's request to allocate the above position was approved effective June 24, 2008.

(7) SENIOR VICE PRESIDENT OF SPECIAL CLAIMS OPERATIONS

The State Compensation Insurance Fund's request to allocate the above position was approved effective June 24, 2008.

(8) CHIEF, INVESTMENT POLICY AND BUSINESS SUPPORT DIVISION

The California Public Employees' Retirement System's request to allocate the above position was approved effective June 24, 2008.

(9) DEPUTY DIRECTOR, "NEW START" PRISON TO EMPLOYMENT SECTION

The California Department of Corrections and Rehabilitation's request to allocate the above position was approved effective June 24, 2008.

ACTION: NOTED

A D J O U R N M E N T

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting held on September 3, 2008.

VOTE: Harrigan, Sheehan, Clarey, Tom, Costigan – Aye (whomever was present goes here, but these are the current Board members)

A handwritten signature in black ink, appearing to read "Suzanne M. Ambrose", is written over a horizontal line.

Suzanne M. Ambrose
Executive Officer
California State Personnel Board